

IN THE COURT OF APPEALS OF IOWA

No. 3-476 / 92-1986

FILED

NOV 29 1993

CLERK SUPREME COURT

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IN RE THE MARRIAGE OF CHERYL A. HALVERSON AND
LARRY R. HALVERSON

Upon the Petition of

CHERYL A. HALVERSON,

Appellee,

And Concerning

LARRY R. HALVERSON,

Appellant.

Appeal from the Iowa District Court for Marshall
County, Carl D. Baker, Judge.

The husband appeals various economic provisions of the
decree dissolving the parties' marriage. **AFFIRMED AS
MODIFIED AND REMANDED.**

Sharon Soorholtz Greer of Cartwright, Druker & Ryden,
Marshalltown, for appellant.

Barry S. Kaplan of Faicall, Fairall, Kaplan, Hoglan,
Condon & Klaessy, Marshalltown, for appellee.

Heard by Schlegel, P.J., and Sackett, J., and Keefe,
S.J.* Donielson, J., takes no part.

*Senior judge from the 1st Judicial District serving
on this court by order of the Iowa Supreme Court.

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KEEFE, S.J.

Cheryl A. and Larry R. Halverson were married on October 16, 1965. Two minor children were born of this marriage, and their welfare will be affected by this dissolution. The children are Chad Halverson, born September 18, 1976, and Wade Halverson, born September 4, 1982. A petition for dissolution of marriage was filed August 29, 1991. Following a trial in August 1992, the court decree was filed October 8, 1992.

An appeal was filed which attacked the trial court's decision in four areas: (1) how to dispose of the collectibles; (2) how to dispose of the homestead; (3) the amount of child support; and (4) the manner the medical expenses for Wade should be paid after the child support ends for Chad.

Our review in a dissolution case is de novo. Iowa R. App. P. 4; In re Marriage of Bergfeld, 465 N.W.2d 865, 868 (Iowa 1991); In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). We give weight to the trial court's findings of fact, but are not bound by them. Iowa R. App. P. 14(f)(7).

The first and main disagreement between the parties is the trial court's decision on how to dispose of the personal property and antiques acquired by the parties. As stated by the trial court, the number of antiques and collectibles was prodigious. It filled several sheds and most rooms in the parties' home. This court examined the

photographs in petitioner's exhibits seven, eleven, and twelve, and reviewed the video tape, respondent's exhibit U.

Tom Harris, an antique expert, testified the collection was valued at \$400,000 to \$500,000. He proposed nation-wide advertising and eight to ten auctions. The sale cost was estimated at twenty-one percent of the gross sales. Petitioner was agreeable to this arrangement. Respondent objected because of the sale expense, plus the income-tax consequences of the sale to the parties. The State and federal taxes would amount to in excess of \$85,000 if the property is sold in one year. The trial court ordered the sale.

The video tape (respondent's exhibit U) reviewed by this court shows the problems faced by the trial court. The tape shows some of the property, but the voice track contains the comments of the parties. Each accused the other of infidelities and other personal defects. Respondent's manner is low-key, but petitioner's involves screaming obscenities. Unfortunately, one of the boys was present during the taping.

Iowa Code section 598.21 (1993) sets forth the factors to consider by the court on disposition of property. It should be divided equitably after considering many factors, including tax consequences. I.C. §598.21(1)(j). With the tremendous sale expense and tax in this case, the parties should be given a opportunity to act as intelligent adults for the benefit of both.

This court feels a better procedure would be the appointment of a master under Iowa Rules of Civil Procedure 207, et seq. The master will then arrange a date for the parties to appear at the farm. A selection rotation will begin by the flip of a coin. Each party will choose an item without a consideration of value. The rotation will continue until all items have passed through this process. Any items not chosen would be put up for public auction by the master. Each party is knowledgeable about antiques so they can protect their own interests as to valuation.

The master will operate under the directive of the trial court and any party who refuses to cooperate will be subject to the contempt power of the court. I.C. §598.23. The master should be appointed within thirty days after procedendo has been filed in this case. If the procedure as outlined above is not effective, further application may be made to the trial court.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or a percentage distribution. Id. The determining factor is what is fair and equitable in each case. Id.

The next contention concerns the trial court's disposition of the homestead. The parties lived on 102.77 acres. The appraised valuation of the property is

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\$92,200. The trial court allowed petitioner to remain on the property until the antique sale took place. The record is clear that petitioner did not want the property. In fact, one cause for marital discord was that respondent never built her a home as he promised. The homestead was originally respondent's great-grandfather's, which the parties purchased at a tax sale.

There is no reason the property should not be given to respondent. The appraised value is \$92,200. He shall pay one-half of that amount plus one-half of the real estate taxes, insurance, and abstract fees due at the time of the transfer to the petitioner. This should be done within forty-five days after procedendo issues.

The next contention is the amount of child support ordered by the court. The two boys were separated as to custody. The custody provision was not appealed by the parties. Both parties are employed by Fisher Controls International in Marshalltown, Iowa. The trial court determined that petitioner's income for child support was \$1,500 per month, and respondent's was \$2,000 per month.

The evidence showed each would make between \$311 and \$340 net income per week. Overtime pay would increase this amount and is to be considered by the court. See In re Marriage of Brown, 487 N.W.2d 331, 333 (Iowa 1992). Where split custody exists, each parent must pay child support according to the guidelines for the noncustodial child. In

re Marriage of Hansen, 465 N.W.2d 906, 910 (Iowa App. 1990).

Each party here has access to overtime hours. Respondent has worked these, while petitioner has not always. If overtime is considered, their incomes are so similar there should be no overpayment from one to the other under the Iowa child support guidelines, promulgated pursuant to section 598.21(4)(a). Until the child Wade no longer is subject to child support consideration, petitioner need not pay child support to respondent. This does not prohibit modification of support if substantial changes in circumstances occur in the future.

The last contention in this appeal is the question of medical expenses for the boys. The trial court's original decree only provided that each party should maintain medical insurance for the child in his or her physical care. No mention was made of uninsured expenses for each boy. When ruling on respondent's rule 179(b) motion, the trial court further provided that respondent would pay any uninsured health expenses for Wade. No mention was made of Chad's uninsured health expenses.

To be equitable, petitioner should pay any uninsured health expenses for Chad. The district court may reserve the right to reconsider this provision if one child has an unusual health expense.

While subject to child support requirements, In re Marriage of Byall, 353 N.W.2d 103, 110 (Iowa App. 1984),

the question of how to handle the medical expenses of Wade after the support obligation for Chad has ended cannot be reasonably determined on the facts at this time and should be determined at an appropriate future date. The district court may reserve jurisdiction for that purpose.

Neither party has requested an assessment of attorney fees on appeal, and it will not be considered. Costs of this appeal should be assessed one-half to each party.

AFFIRMED AS MODIFIED AND REMANDED.